

**PD-0578-18**

FILED  
COURT OF CRIMINAL APPEALS  
11/13/2018  
DEANA WILLIAMSON, CLERK

**IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS**

**ROBVIA SIMPSON**

**Appellant,**

**vs.**

**THE STATE OF TEXAS,**

**Appellee.**

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**ON THE STATE'S PETITION FOR REVIEW  
FROM THE 12<sup>TH</sup> COURT OF APPEALS, TYLER, TEXAS,  
AND FROM THE 87<sup>TH</sup> DISTRICT COURT  
OF ANDERSON COUNTY, TEXAS  
HONORABLE DEBORAH OAKS EVANS, PRESIDING**

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**APPELLANT'S BRIEF**

**STEPHEN EVANS  
SBN: 06717580**

**LAW OFFICE OF STEPHEN EVANS  
1000 NORTH CHURCH  
P.O. BOX 754  
PALESTINE, TEXAS 75802  
903-723-3334 Fax: 903-723-0124**

**ATTORNEY FOR APPELLANT**

### ***IDENTITY OF PARTIES AND COUNSEL***

|  |  |                 |
|--|--|-----------------|
| The parties to the trial court's judgment are: | Robvia Simpson   | Defendant       |
|  | The State of Texas   | Prosecution     |
| Trial counsel were:                            | Mr. Stephen Evans<br>Attorney at Law<br>1000 N. Church<br>Palestine, Texas 75801   | Defense Counsel |
|  | Anderson County District Attorney<br>Anderson County Courthouse<br>Palestine, Texas 75801<br>903-723-7403  | State           |
| Petition counsel are:                          | Stephen Evans<br>1000 N. Church<br>P.O. Box 754<br>Palestine, Texas 75802<br>903-723-3334 Fax: 903-723-0124<br>Email: <a href="mailto:sevenslaw@aol.com">sevenslaw@aol.com</a> | Appellant       |
|  | Allyson Mitchell<br>Anderson County District Attorney<br>Anderson County District Attorney's Office<br>Appellate Section<br>Address above                                      | State of Texas  |
| Trial Judge:                                   | Hon. Deborah Oaks Evans<br>87 <sup>th</sup> Judicial District<br>Sitting in Anderson County, Texas   |                 |

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| Miller v State 815 S.W.2d 582 ( Tex. Crim. App. 1991) .....                                 | 2 |
| State v Waters 02-16-00274-CR, ( Tex.Crim.App. Ft.Worth July 6, 2017,<br>pet. granted)..... | 2 |

## **Constitutions, Codes and Statutes**

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## **STATEMENT REGARDING ORAL ARGUMENT**

This Honorable Court has issued advisory that oral argument is not viewed as necessary in this matter, although the State has indicated that such argument would be beneficial to the Court. Appellant, given the brevity of the respective submitted briefs, and the isolation to a single issue in controversy, does not believe that oral argument would provide supplemental information, nor be beneficial to the Court in reaching a finding in this matter.

## ***STATEMENT OF THE CASE***

This is a subsequent review by an appellate body of the trial of this matter before the 87<sup>th</sup> Judicial District Court, sitting in Anderson County, Texas. Appellant was convicted of two felony offenses, one being a lesser included offense from the charging indictment, being assault of a public servant rather than aggravated assault of a public servant, and the second offense being aggravated assault with a deadly weapon, which is the offense in question before this Honorable Court. All requisites of appeal and petition have been timely and duly filed or submitted to perfect review before this Court.

## **FACTS OF THE CASE**

The operative facts of this case are not in controversy. The issue presented to this court for review, involves whether the appellant is entitled to the submission of a special jury issue, that allows that jury to evaluate whether the Appellant acted in self defense. Without such issue, the jury in this case had virtually no alternative given the testimony of the parties at the scend, but to render the verdict as shown in the record of this case. However, there also is no controversy, that the evidence at trial did in fact support the issue of self defense, and that but for the bar imposed by the trial court in its refusal to submit the issue. The State supported that bar by the introduction of judgment from the Houston County District Court that revoked the probation of the Appellant for a time served sanction, that did contain an allegation depicting in summary fashion, the instant offense. Appellant opposed by submission and resulting bar, as there was not a showing of knowing and intelligent waiver as to the revocation action. Further, at the conclusion of trial in the guilt and innocence phase of the trial, Appellant did request a special jury issue, which is the center of review. Evidence that was supportive of self defense had been submitted by testimony of the Appellant and the purported victim, without objection and without instruction to disregard such evidence, yet no responsive jury issue to reflect the jury findings in regard to the



evidence. The Court of Appeals issued judgment that reflected significant analysis of the various *Doan* cases, and rendered that appropriate due process would only be served by the inclusion of the affirmative defense issue, rather than exclusion by the application of either waiver or collateral estoppel. Appellant respectfully submits that the 12<sup>th</sup> Court of Appeals did not act in error in reaching its conclusion.

***ISSUE PRESENTED***

**DID THE COURT OF APPEALS ERR IN ITS FINDING THAT THE APPLICATION OF *DOAN, II, AND III*, DID NOT BAR THE SUBMISSION OF A REQUESTED ISSUE OF SELF DEFENSE, AND AFFORD THE APPELLANT FAIR DUE PROCESS.**

## ***SUMMARY OF THE ARGUMENTS***

### **ISSUE ONE:**

**This Honorable Court is charged in this case with weighing the interests of fair and appropriate due process, versus the asserted equitable prohibition for the jury to render a full and just verdict. The Court of Appeals provided exhaustive review to the matter, and did not err in its findings that the affirmative defense issue should have been submitted to the jury.**

## **NOTATION GLOSSARY**

**R.R. .... Reporter's Record**

**C.R. .... Clerk's Record**

**Vol. .... Volume/Page**

## ***POINTS, ARGUMENTS, AND AUTHORITIES***

### **I.**

**DID THE COURT OF APPEALS ERR IN ITS FINDING THAT THE APPLICATION OF *DOAN, II, AND III*, DID NOT BAR THE SUBMISSION OF A REQUESTED ISSUE OF SELF DEFENSE, AND AFFORD THE APPELLANT FAIR DUE PROCESS.**

The Court of Appeals conducted a two step review of the point of error submitted in this case. That is: (1) *Was there error in the charge; and (2) Did that error inflict harm?* The State is complaining that the latter element of review is removed by the institution of waiver and collateral estoppel via the revocation judgment and the global plea of true entered therein. The Court of Appeals looked carefully and exhaustively at this Honorable Court's opinions as expressed in, *Ex Parte Tarver*, 725 S.W.2d 195, (Tex Crim. App. 1986); *Ex Parte Doan*, (Doan II), 369 S.W.3d 205 (Tex. Crim.App. 2012) and *Ex Parte Doan* ( Doan III), No. 03-08-00704-CR, 2012 WL 6698987 (Tex. App.-Ft.Worth Dec. 21, 2012, pet. ref'd ) . Those cases, while touching on the equitable issues presented by the State in this

matter, did not present findings that would result in a bar to the submission of an affirmative defense issue to the jury. While the Court of Appeals did relate that this Court had not issued or , *[d]efinitively articulated the differing standards of proof between res judicata and collateral estoppel...* (Mem. Opinion, pg. 7), that Court did conduct significant review of the civil context of the principles involved, and focused on the appropriate aspect of whether the involved issues had been actually litigated in the preceding case, citing, *State v. Waters, No. 02-16-00274-CR, 2017, WL 2877086, (Tex. App.-Ft. Worth July 6, 2017, pet.granted)*, among other current memorials of precedent. Also citing *Waters*, for the aspect that the Houston County District Court did not act on the allegation depicting the Anderson County case as an essential element of its action, nor was self defense barred by its specific litigation in that case. *Tex. Pen. Code, sec. 9.02 (2011)*; ( Mem. Opinion, pg 8). Harm was found to exist by the Court of Appeals, and thus as this Court found in , *Miller v State, 815 S.W.2d 582, (Tex.Crim. App. 1991)*, the Appellant has suffered harm from the lack of submission of the issue on self defence, and resulted in the denial of fair and just due process. The sustaining of the error by the Court of Appeals was founded upon an exhaustive review of the law and facts of this case, and just as that Court found the matter should be remanded to the trial court, this Honorable Court should find that no error was presented by the State, nor in other legal precedent, applicable to the facts of this case.

**PRAYER**

***WHEREFORE, PREMISES CONSIDERED, Appellant respectfully prays that this Court confirm the findings of the 12<sup>th</sup> Court of Appeals, and for such other and further relief as she may show herself deserving, at law and in equity.***

***Respectfully submitted,***

***/s/ Stephen Evans***

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**STEPHEN EVANS  
LAW OFFICE OF STEPHEN EVANS  
1000 NORTH CHURCH  
P.O. BOX 754  
PALESTINE, TEXAS 75802  
903-723-3334 FAX: 903-723-0124  
SBN: 06717580  
ATTORNEY FOR Appellant**

**CERTIFICATE OF SERVICE**

***This is to certify that a copy of this brief has been forwarded via electronic email attachment delivery, to the office of the Anderson County District Attorney, on the 7<sup>th</sup> day of October, 2018.***

***/s/ Stephen Evans***

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**STEPHEN EVANS**



**CERTIFICATE OF COMPLIANCE**

***This is to certify that the foregoing brief is in compliance with the Texas Rules of Appellate Procedure, (2013), in the word content of the brief, with such brief containing 1,634 words.***

***November 7, 2018***

***/s/ Stephen Evans***

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***Stephen Evans***